

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON ELLIS SMITH,

Defendant.

No. 2:98-cr-0009 KJM

ORDER

On January 21, 2015, the court issued an order denying defendant's motion to dismiss his indictment for lack of jurisdiction. ECF No. 95. Defendant filed a request "for a more definite statement" under Rule 12(e) because he "is uncertain as to the bases of the Court's denial." ECF No. 96 at 1. Initially, the court disregarded the request as not provided for by rules of court. ECF 97. In light of defendant's most recent filing requesting a status, ECF 98, the court exercises its discretion to consider the merits of the first request, to the extent it can discern what defendant seeks. Because 12(e) applies to vague pleadings and not orders of the court, the court construes the request as one for reconsideration. As set forth below, the motion for reconsideration is denied.

Because defendant's motion was filed within twenty-eight days of the court's order and entry of judgment, the court construes it as one brought under Federal Rule of Civil

1 Procedure 59(e). *See Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 898–99
2 (9th Cir. 2001). Motions for reconsideration are permissible in criminal cases. *See United States*
3 *v. Mendez*, No. 07-00011, 2008 WL 2561962, at *1 (C.D. Cal. June 25, 2008); *accord* L.R.
4 430(i). They are governed by the same rules as their equivalents in civil cases. *See Mendez*, 2008
5 WL 2561962, at *2. In general, a motion to reconsider founded on Rule 59(e) may be granted
6 (1) to correct “manifest errors of law or fact,” (2) to present new, previously unavailable
7 evidence, (3) to prevent manifest injustice, or (4) to account for “an intervening change in
8 controlling law.” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).

9 Defendant does not clearly state the basis for his motion, but the court construes
10 his argument as essentially seeking to correct errors of law or fact and prevent manifest injustice.
11 However, his motion relies on arguments and facts he presented in his original motion to dismiss
12 the indictment, matters the court considered and rejected in issuing its previous order. *Compare*
13 *Order*, ECF No. 95 (stating “the jurisdictional requirement is satisfied whether or not the NCUA
14 insures against losses from robberies” and “Counsel was therefore not ineffective in failing to
15 raise a jurisdictional challenge to the offense”), *with* *Mot.*, ECF No. 96 (arguing “[b]ased on the
16 Ninth and Tenth Amendment Mr. Smith had a right to have his [a]ttorney raise a jurisdictional
17 issue . . .”). The only issue the court may construe as a new claim is defendant’s statement that
18 the “order does not address any time restraints where [defendant’s] issues were timely presented
19 for review.” ECF No. 96 at 2. Defendant’s original motion to dismiss did not refer to “time
20 restraints,” and the court does not find any timeliness issues requiring resolution in response to
21 the present motion. Defendant has not identified any manifest injustice resulting from the prior
22 order.

23 Defendant’s filing construed as a motion for reconsideration is DENIED with
24 prejudice. This disposes finally of ECF No. 96.

25 IT IS SO ORDERED.

26 DATED: June 2, 2015.

27 
28 UNITED STATES DISTRICT JUDGE